Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
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Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services	)	WT Docket No. 02-381
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To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION

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SUMMARY

From its roots as a single-exchange rural telephone company in Western Oklahoma, Dobson Communications Corporation ("Dobson") has grown to become a leading provider of wireless services in rural, ex-urban and suburban markets in seventeen states. Dobson knows the rural wireless market, and is pleased to share its views regarding the Commission's inquiry into the delivery of spectrum-based services in rural America.

To truly understand rural wireless service issues, one must recognize that, as the CMRS marketplace has evolved and matured, rural markets for wireless services are no longer islands unto themselves. Rural markets have become part of the larger unified nationwide market for wireless services, and consumers in rural markets now demand the same services at the same prices as consumers anywhere. It is therefore no longer useful for the Commission to apply artificial distinctions between rural and urban markets. Dobson offers its rural customers essentially the same wide variety of service plans as the nationwide carriers do. We compete with nationwide carriers virtually everywhere we operate, either because they have built out facilities in our markets or because they can offer their nationwide services to customers through roaming arrangements and other affiliations.

Although wireless competition took root initially through the build-out of PCS networks in urban areas, vigorous competition has now reached rural America. As the national carriers expanded their footprints, they began to advertise nationally and offer services in rural areas. Rural carriers like Dobson have responded, but the economic reality of providing wireless service to rural areas presents challenges for rural carriers that the national carriers need not face. With more limited capital budgets, rural carriers need every dollar to improve their services, and the Commission should recognize that capital spent to satisfy regulatory mandates will be unavailable for service improvements.

The wireless sector has developed into the most competitive sector of the telecommunications industry, and rural areas are no exception. The rural wireless market in 2003 is highly competitive, with multiple carriers providing services where it makes economic sense to do so. Some rural stakeholders appear bent on convincing the Commission to adopt new regulations that will provide them with an

advantage in deploying services in rural areas. Dobson submits that, except with respect to universal service rules that should give wireless carriers an opportunity to compete with landline carriers for support to serve high-cost areas, such measures are unnecessary and would be counterproductive. Instead, Dobson suggests that the Commission can best advance the goal of promoting deployment of spectrum-based services in rural areas by helping the overall wireless sector recover from its recent financial troubles, including allowing some consolidation and maintaining policies that allow market forces, not regulatory mandates, to work their will. In addition, the Commission should: repeal the cellular cross-interest rule as it applies in RSAs; allow voluntary secondary market transactions, and not mandated disaggregation or partitioning, to determine how and when underutilized spectrum can be put to use; make clear that increased unlicensed use of spectrum will be limited to designated bands and that unlicensed underlay operations and opportunistic easements will not be allowed in bands currently licensed exclusively to incumbent carriers; refrain from favoring a single sub-group of rural service providers (rural telephone companies) with a special bidding credit; and relax the application of unfunded mandates that would otherwise force rural carriers to divert capital from improving service to rural areas.

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COMMENTS

Dobson Communications Corporation ("Dobson") hereby submits comments in response to the Commission's December 20, 2002 Notice of Inquiry in the above-captioned proceeding.[1] The *NOI* seeks public input on a variety of issues that concern the effectiveness of the Commission's regulatory policies intended to facilitate the delivery of spectrum-based services to rural areas. As a leading provider of rural and suburban commercial mobile wireless services throughout the United States, Dobson is particularly well-positioned to offer comment on some of the issues raised in the *NOI.*

INTRODUCTION

Dobson began as a rural telephone company in the 1930s with a single exchange in Western Oklahoma. Seeing the potential of mobile telephony to improve the lives of rural Americans, Dobson began offering cellular mobile services in 1990 in Western Oklahoma and the Texas Panhandle. Through an acquisition strategy targeting underdeveloped rural and suburban areas, Dobson has rapidly expanded

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[1] *Facilitating the Provision of Spectrum Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Notice of Inquiry*, FCC 02-325 (rel. Dec. 20, 2002) ("*NOI*").

its wireless operations and currently owns or manages wireless networks in seventeen states, from Alaska to New York, and operates in fifty-two Rural Service Areas ("RSAs") and thirteen Metropolitan Statistical Areas ("MSAs"), with over 1.4 million customers in a managed population base in excess of 10 million.[2] Dobson's wireless networks include rural areas, low-density ex-urban and suburban areas, and a handful of smaller cities, but approximately 85 percent of our coverage is in rural areas. We provide mobile phone service coverage to more than 98 percent of the population in our licensed areas.

Even with our rural orientation, Dobson was one of the first carriers to install digital technology in 100 percent of its markets, and we are continuing to introduce a variety of innovative products and services into virtually all of our markets. Our company is very different today than the local exchange carrier that started in Dust Bowl-era Oklahoma, but Dobson is still committed to providing high-quality services to customers in rural areas and believes strongly in the future of rural wireless services.

The Commission is engaged in a worthwhile effort to "broaden our understanding of the effect our current policies have had on the availability of spectrum-based services in rural America" with a view toward determining "whether it is appropriate to adopt new approaches in these areas."[3] In Dobson's view, rural markets for spectrum-based services are developing well, and wide-ranging regulatory intervention is not needed to better fulfill statutory goals for rural deployment.

In these comments, Dobson will attempt to explain the nature of the rural wireless marketplace and the service provided therein, and will focus on several elements of policy that we believe are crucial for the Commission to best promote the development and deployment of spectrum-based services in rural America. Specifically, as discussed in detail below, Dobson urges the Commission to:

- ensure a regulatory environment that will foster recovery in the wireless sector generally;
- repeal the cellular cross-interest rule as it applies in RSAs;

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[2] These figures include markets licensed both to wholly-owned Dobson subsidiaries and to American Cellular Corporation ("ACC"), in which Dobson holds a 50 percent ownership interest and which Dobson manages.

[3] *NOI* at ¶ 11.

- allow voluntary secondary market transactions, and not mandated disaggregation or partitioning, to determine how and when underutilized spectrum can be put to use;
- make clear that increased unlicensed use of spectrum will be limited to designated bands and that unlicensed underlay operations and opportunistic easements will not be allowed in bands currently licensed exclusively to incumbent carriers;
- refrain from favoring a single sub-group of rural service providers (rural telephone companies) with a special bidding credit;
- retain Eligible Telecommunications Carrier rules that encourage competition and build-out in rural markets; and
- relax the application of unfunded mandates that would otherwise force rural carriers to divert capital from improving service to rural areas;

Rural carriers know that to effectively compete they must offer products and services that are competitive with the offerings of the largest carriers. Given this marketplace reality, the Commission should rely on market-based policies in its regulation of the wireless industry and allow the competitive market, not the government, to exert demands upon carriers. In a recent article discussing ways to bring recovery to the telecommunications sector, Chairman Powell echoed this theory, stating that "reliance where possible on competitive market forces rather than regulation is a key part of the solution to our current troubles."[4] The Commission has initiated a spectrum policy reform process that stresses the use of marketplace forces to achieve the most effective and efficient use of spectrum.[5] Applying this approach to rural service issues is the best way for the Commission to accomplish the statutory goal of promoting the development and rapid deployment of new technologies, products and services in rural areas.[6]

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[4] Michael Powell, FCC Chairman, "Rx for Telecom In Competition," Wireless Week, January 15, 2003.

[5] *See Spectrum Policy Task Force*, ET Docket No. 02-135, *Report*, November 2002; *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Notice of Proposed Rulemaking*, 15 FCC Rcd 24203 (2000) ("*Secondary Markets NPRM*").

[6] *See* 47 U.S.C. § 309(j)(3)(A).

I. The Rural Wireless Market Is Now Part of a Unified Nationwide Market For Wireless Services and Rural Consumers Are Enjoying the Benefits of Competitive Service Offerings.

The *NOI* seeks comment on, among other things, whether the size of geographic service areas affects the provision of wireless service to rural areas and whether national or rural carriers are better positioned to provide service to rural areas.[7] That it even asks these questions suggests that the Commission does not yet fully appreciate the nature of the rural wireless market and the extent of the services provided today in rural areas. In comments recently filed in connection with the Commission's annual analysis of competition in the commercial mobile radio service ("CMRS") market, Dobson demonstrated that as the CMRS industry has matured, competition in rural areas has developed sufficiently to make meaningless any competitive distinction between urban and rural areas.[8] Although many rural markets may have fewer facilities-based carriers than the average urban market, rural markets should be viewed as part of a broader unified nationwide market for wireless services.

Rural wireless markets have evolved greatly just in the past few years. As nationwide wireless carriers extended their footprints into rural areas, both by building-out their own networks and through roaming and affiliation agreements, and began to advertise their services nationwide, rural residents became better informed about the available choices and began to demand these same choices in rural markets. And rural carriers have responded. Today, the level of services and rates demanded by customers in rural markets are not, in any meaningful way, different from those demanded by urban customers.[9]

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[7] *NOI* at ¶ 19.

[8] *See* Comments of Dobson Communications Corporation, filed January 27, 2003 in response to *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, *Notice of Inquiry*, FCC 02-327 (rel. Dec. 13, 2002) ("*CMRS Competitive NOI*").

[9] *See* Dobson *CMRS Competition NOI* Comments (filed January 27, 2003) at 2-4.

To fully grasp rural wireless service issues, it is crucial that the Commission understand that facilities-based carriers in rural markets compete against nationwide carriers even if the nationwide carriers are not licensed to provide service there. Customers and potential customers in rural markets are aware of the rates and services offered by nationwide carriers, either because a nationwide carrier offers service (either themselves or through an affiliate or roaming partner) or because of national advertising. These rural consumers consequently expect to be offered those same services and rates. If the local rural carrier fails to meet these expectations, rural wireless customers usually can find a nationwide carrier who will provide service at nationwide carrier prices through the use of roaming arrangements. Thus, because of the mobility involved and the way in which wireless service operates as a practical matter, nationwide carriers are able to offer service and therefore compete with rural carriers even without a full build-out of facilities where the customer lives or works.

Dobson competes with nationwide carriers in virtually every rural market in which it provides service, and has responded to this competition just as any carrier would. Indeed, Dobson customers enjoy most of the same pricing and service options that are available to urban market subscribers. For example, in rural areas as diverse as Butler, PA, Pampa, TX and Sitka, AK, Dobson offers customers and prospective customers nationwide, regional and local calling plans similar in both scope and price to those offered by the nationwide carriers in the largest urban markets.[10]

In February 2002, Dobson's Chief Operating Officer, Doug Stephens, participated in a Commission Public Forum that was convened to explore ways for the Commission to better gather and analyze data for its annual CMRS Competition Reports to Congress. Mr. Stephens stressed that the competitive landscape that existed in rural markets in the mid-1990s bears no resemblance to the

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[10] Dobson has entered into roaming arrangements with AT&T Wireless and Cingular Wireless in order to be able to offer customers nationwide service in competition with other large carriers.

competition that exists in rural markets today.[11] He argued that "it is no longer useful for the Commission to apply an urban/rural distinction, applying different rules according to some artificial division between the two. There are only 'markets' – some are large and some are small."[12] In order to remain competitive, especially in markets with a limited customer base, rural carriers realize they must offer services and rate plans that are indistinguishable from those offered in urban areas.

Because vigorous competition for wireless services exists in rural areas, both the quality of services and the quantity of coverage provided in these areas have increased, while prices have fallen. Wireless competition in rural areas is driving Dobson and other rural carriers to extend their coverage areas wherever it is economically feasible to do so. This is how markets are supposed to work – competition driving service. And the wireless sector is the most competitive sector in the telecommunications industry. But the recent telecom slump has made the challenge of meeting wireless service needs more difficult, especially for rural carriers.[13]

For the Commission's part, the policies that will promote spectrum-based services in rural areas are those that create a regulatory environment that will help foster the overall financial recovery of the wireless sector. If a newly robust wireless industry emerges, competitive forces already in place in rural areas will work to satisfy service needs by enabling carriers in these areas to further extend service when it makes economic sense to do so. The Commission can best help the industry regain that condition by maintaining a market-based orientation in its regulatory policies.

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[11] Remarks, Doug Stephens, Interim Chief Operating Officer and Vice President – Central Region, Dobson Communications Corporation, before the Federal Communications Commission Public Forum on Commercial Mobile Radio Service Competition, February 28, 2002, at 3.

[12] *Id.*

[13] Dobson and other rural carriers compete for financing along with everybody else, including the nationwide carriers. The fact that capital markets do not view rural wireless as distinct from the rest of the wireless industry is another indication that a single nationwide market for wireless has evolved.

II. The Commission Can Promote Rural Wireless Services By Ensuring A Regulatory Environment That Fosters Recovery In The Wireless Industry Generally.

To the extent that wireless services are not being provided in some portions of some rural markets, this is a function of the basic economics involved in providing service to more remote or sparsely populated areas and the financial difficulties through which the entire wireless industry is currently suffering. The best thing that the Commission can do to promote additional build-out of wireless services is to adopt policies that will ensure that the regulatory environment fosters an overall recovery in the wireless sector.[14]

A. The Commission Should View Some Consolidation in the Wireless Industry Favorably.

The wireless sector is now the most competitive sector of the telecommunications industry. With six nationwide carriers, plus numerous smaller regional carriers, it is generally accepted that some consolidation in the wireless sector is necessary for financial recovery to occur. This belief is shared by Chairman Powell, who recently stated that "prudent industry restructuring may not only improve the financial health of the sector, but can increase efficiency and promote consumer welfare."[15] Even with some consolidation, however, the CMRS market will remain extremely competitive.

Intense competition among such a large number of wireless service providers has caused investors to restrict the flow of capital into this sector. At the same time, carriers have been engaged in a price war to garner a greater share of a subscriber base whose growth has slowed. Per-minute prices have been dropping at an average rate of 6.5 percent a quarter,[16] and the average monthly bill for mobile phone

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[14] As noted in Section IV, *infra*, the Commission can promote the extension of services to remote areas where they would otherwise be uneconomic by ensuring that universal service funds are made fairly available to wireless carriers that choose to serve those areas.

[15] Michael Powell, FCC Chairman, "Rx for Telecom In Competition," Wireless Week (January 15, 2003).

[16] Olag Kharif, "Waiting for the Wireless Mergers," Street Wise (October 11, 2002) (http://www.businessweek.com/technology/content/oct2002/tc20021011_2022.htm).

customers dropped about 8 percent, from $66 in 2000 to $61 at the end of 2001.[17] The Commission acknowledged this trend in its *Seventh CMRS Competition Report*.[18] Though price-cutting competition benefits consumers, it can hamstring the industry as customer contracts barely cover marginal costs.[19]

Dobson submits that consolidation is necessary to stabilize the industry.[20] Without consolidation, some analysts believe that "the industry is doomed to follow the airline industry mold that is witnessing companies falling in and out of bankruptcy on a regular basis."[21] The Commission should recognize that some consolidation will lead to a healthier industry that will remain highly competitive. The remaining players will continue to compete for market share, so customers will enjoy competitive prices and services.

B. The Commission Should Fully Repeal the Cellular Cross-Interest Rule.

In the *NOI*, the Commission asks whether and to what extent its retention of the cellular cross-interest rule for RSAs advances spectrum-based services to rural areas.[22] As Dobson has previously advocated, the Commission should immediately repeal the rule as applied to cellular licensees in RSAs.[23]

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[17] Raul L. Katz, Maximilian E. Weise, and Daniel H. Yang, "Consolidation: The Wireless Way," Strategy + Business at 1 (http://www.strategy-business.com/press/article/?art=9041512&pg=0).

[18] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report,* 17 FCC Rcd 12985, 13012 (2002) ("*Seventh CMRS Competition Report*").

[19] Jonathan Moules, "Overcrowding Puts Squeeze on Wireless: The US Market is Desperately in Need of Consolidation," Financial Times, Companies & Finance The Americas (January 15, 2003) at 26.

[20] "FCC Guidance on Wireless Mergers Needed, CTIA's Wheeler Says," Communications Daily (October 31, 2002) ("Market consolidation in wireless industry is needed before wireless companies can turn positive growth figures into better performance on Wall Street.").

[21] Dan Meyer, "Landline Displacement to be Continued Market Driver," RCR Wireless News (November 4, 2002) at 16.

[22] *NOI* at ¶ 24.

[23] Dobson Communications Corporation, Petition for Reconsideration, WT Docket No. 01-14, filed February 13, 2002; Dobson Communications Corporation, Comments, WT Docket No. 02-310, filed October 18, 2002; Dobson Communications Corporation, Comments, WT Docket No. 02-325, filed November 18, 2002.

The Commission eliminated the cellular cross-interest rule for MSAs because it concluded that the rule "is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in each market."[24] As explained above, however, competition in RSAs is flourishing. Given the successful development of competition in rural markets, the Commission cannot rationally continue to apply the rule, which is based on an artificial and meaningless distinction between MSAs and RSAs. Wireless consumers in RSAs are offered generally the same products and services as consumers residing in MSAs. Therefore, because the competitive pressures which RSA carriers face are the same as those faced by MSA carriers – even where there are fewer "facilities based" carriers – applying the cellular cross-interest rule in RSAs but not in MSAs is arbitrary and capricious and cannot be justified.

Retaining the cellular cross-interest rule in RSAs also has a significant adverse impact on the ability of RSA cellular licensees to expand their build-out in rural areas. As noted above, consolidation in the wireless industry is coming. Though the Commission promised to consider waivers of the cross-interest rule, the necessity of securing a waiver to consummate a transaction makes negotiating that transaction extraordinarily difficult, if not impossible. The uncertainty inherent in the waiver process causes potential partners and financial sources more hesitant to commit to a transaction, thus placing RSA-focused carriers like Dobson at a severe disadvantage in seeking additional capital. Therefore, complete repeal of the cellular cross-interest rule will help rural carriers attract capital and promote the deployment of wireless services in rural areas.

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[24] *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22707 (2001).

C. Market Mechanisms Should Be Used To Determine Whether Build-Out Should Be Extended Into Unserved Areas; Thus, The Commission Should Allow Voluntary Secondary Market Transactions and Not Require Licensees to Disaggregate or Partition Unused Spectrum.

In its Secondary Markets proceeding, the Commission has proposed a market-based approach to promoting more efficient spectrum usage.[25] Dobson agrees that providing carriers with the flexibility to engage in voluntary secondary market transactions in which rights to use licensed spectrum can be transferred without the need for regulatory approval will better allow spectrum to flow to its most efficient use and provide consumers with "the highest valued services in the most efficient manner."[26] Authorizing secondary market transactions will also help to facilitate the provision of wireless services to rural areas, because firms will more easily be able to access spectrum to provide services they believe will fill unserved market niches. The Secondary Markets initiative is just the kind of market-oriented reform that Dobson believes is needed. The Commission should take action in this proceeding as soon as possible.

In a seeming contradiction to the policies embodied in the Secondary Markets proceeding, the Commission asks in the *NOI* whether carriers should be required to partition unused service areas and disaggregate unused spectrum so as to promote the provision of service to rural areas.[27] Dobson strongly opposes any such requirement. Indeed, it is unclear how a partitioning/disaggregation requirement could possibly work. Because two willing parties are required in order for such transactions to occur, they must be voluntary in nature. Surely the Commission could not force a private party to be a partitionee or disaggregate. If a market need exists for a particular service that is not being provided in a particular area, and a partition or disaggregation can fill that need and offer value to both sides, the transaction

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[25] *Secondary Markets NPRM, supra* note 5; *see also Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement*, 15 FCC Rcd 24178 (2000) ("*Policy Statement*").

[26] *Policy Statement* at 24180.

[27] *NOI* at ¶ 20.

should occur naturally. The Commission is ill-equipped to create incentives for licensees to partition service areas or disaggregate spectrum; it should avoid inserting itself in such matters.

Requiring partitioning or disaggregation also would run counter to the basic theory underlying the Commission competitive bidding regime. The Commission utilizes auction processes because they are "likely to foster the rapid deployment of new technologies and products by placing spectrum in the hands of those who value it most highly."[28] No bidder in an auction would be able to accurately assess the value of the licenses being put up for bid if, after winning, it would face the prospect of being required to divest a portion of its service area or spectrum. Even proposing such a requirement undercuts the integrity of the auction process. Furthermore, wireless licensees have acquired their spectrum licenses on the basis of Commission rules that offered certainty as to the rights being acquired. The Commission cannot now change the rules to require licensees to divest spectrum rights simply because the Commission considers them underutilized. As long as licensees are in compliance with the Commission's rules, licensees must be left alone to carry out their business plans without Commission interference, and the market should be left to determine how spectrum that is currently unused should be put to use.

D. The Commission Should Make Clear That Additional Unlicensed Uses Will Not Be Allowed In Spectrum Bands Currently Licensed to Wireless Carriers.

Dobson recognizes the potential of unlicensed devices to facilitate access to broadband services, and views positively the Commission's recent inquiry into allocating additional spectrum for unlicensed uses.[29] Dobson is very concerned, however, about the Commission's suggestion that higher power levels

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[28] *Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Notice of Proposed Rulemaking*, 12 FCC Rcd 7973, 7997 (1997). *See also DBPCS, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 17590, 17599 (2000); *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18645 (1997).

[29] *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No. 02-380, *Notice of Inquiry*, FCC 02-328 (rel. Dec. 20, 2002).

for unlicensed devices may be acceptable in rural areas.[30] Higher powered unlicensed devices would cause unacceptable levels of interference to licensed facilities when they were in close proximity, and it would be impossible to restrict their use to unserved areas. The Commission should abandon this notion.

Similarly, Dobson urges the Commission to make clear that unlicensed underlay operations and opportunistic easements will not be allowed in bands currently licensed to incumbent carriers under the exclusive use model. In it recently released report, the Spectrum Policy Task Force concludes that although additional spectrum is needed for unlicensed devices, "the Commission will have to pay careful attention to legitimate concerns of other spectrum users."[31] The Task Force goes on to say that while the Commission must "explore ways to promote spectrum access and flexibility in rural areas," the Commission must take congestion levels into consideration in order to avoid interference to current users.[32] Rural carriers like Dobson have made significant investments in their networks in order to provide high quality service to their customers. Because existing wireless networks have been designed with the Commission's current interference rules in mind, changing those rules for currently licensed bands would wreak havoc on incumbent networks and prevent them from providing reliable service to customers. Therefore, while agreeing that the allocation of new unlicensed spectrum is important to facilitate the rapid introduction of new technologies, Dobson urges the Commission to forsake any plans to encourage or facilitate underlay unlicensed operations or opportunistic easements in bands currently occupied by wireless carriers.

E. Smaller Service Area Sizes Do Not Necessarily Foster Build-Out of Rural Areas.

Though the products and services offered in rural and urban markets are essentially indistinguishable, smaller rural carriers must operate in some fundamentally different ways than large

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[30] *NOI* at ¶ 29.

[31] *Spectrum Policy Task Force Report*, ET Docket No. 02-135, at 54-55 (November 2002).

[32] *Id.* at 59.

nationwide carriers do. With limited capital budgets and higher marginal costs, rural carriers must carefully control their expenditures. As carriers grow in size, they can take advantage of economies of scale. A recent study shows that "mobile network operators with the highest share of customers within a region benefit from having the lowest costs per subscriber."[33] For example, in 2001, the average annual operating cost per subscriber for a carrier with a 15 percent regional market share was about $350, while cost per subscriber for a wireless company with an approximately 2.5 percent penetration rate was about $700.[34] The history of the wireless industry clearly demonstrates the inclination to "cluster" systems, thereby achieving greater scale economies. Since greater profitability comes from combining license service areas, carriers are naturally inclined to do so.

Because carriers' investment decisions are driven principally by economic and competitive factors, offering smaller licensed service areas does little to facilitate improved service to unserved areas. In today's competitive environment the marketplace determines whether an unserved area will be developed. Carriers will provide wireless services in previously unserved areas if there is sufficient demand to generate desired revenues. The geographic size of the licensed service area is not a significant factor.

III. The Commission Should Not Favor Rural Telephone Companies With Special Bidding Credits.

In the *NOI*, the Commission asks whether it should adopt a bidding credit specifically favoring rural telephone companies ("rural telcos") in order to effectively promote the provision of wireless services to rural areas.[35] Given Dobson's commitment to, and its demonstrated success in, serving rural areas, we are troubled that the Commission would consider favoring one class of rural service provider

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[33] Raul L. Katz, Maximilian E. Weise, and Daniel H. Yang, "Consolidation: The Wireless Way," Strategy + Business at 2 (http://www.strategy-business.com/press/article/?art=9041512&pg=0).

[34] *Id.*

[35] *NOI* at ¶ 16.

over others. Such action is not compelled by Section 309(j) of the Communications Act, and doing so would be bad policy. As Dobson's and other carriers' presence in rural markets proves, the Commission need not favor rural telcos as a class in order to facilitate the provision of wireless service to rural areas.

Section 309(j)(3)(A) of the Communications Act directs the Commission, in identifying classes of licenses and permits to be issued by competitive bidding, to seek to promote the objective of "the development and rapid deployment of new technologies, products, and services for the benefit of the public, *including those residing in rural areas*, without administrative or judicial delays."[36] In setting this objective, Congress focused on customers, for whose benefit new technologies, products and services would be provided. The Commission's attention should likewise be directed toward actions that would promote the deployment of service to rural customers, not on favoring a particular category of companies that provide services to rural areas. Favoring rural telcos over other providers of rural wireless services does nothing to achieve this objective.

The statute also seeks to encourage dissemination of "licenses among a wide variety of applicants," including rural telcos, and directs the Commission to ensure that rural telcos (among others) "are given the opportunity to participate in the provision of spectrum-based services . . . ."[37] As the Commission has repeatedly recognized, rural telcos have liberally availed themselves of the bidding credit offered to small businesses in Commission auctions, and they have succeeded in acquiring rural area licenses through the auction process.[38] Thus, rural telcos have already enjoyed a greater

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[36] 47 U.S.C. § 309(j)(3)(A) (emphasis added).

[37] 47 U.S.C. § 309(j)(3)(B), 47 U.S.C. § 309(j)(4)(D).

[38] *NOI* at ¶ 6 ("[A]n examination of the 29 auctions completed by the Commission as of September 18, 2002, that offered small business bidding credits, reveals that 84 percent of qualified bidders that identified themselves as rural telcos . . . were eligible to receive a small business bidding credit"); *see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making,* 15 FCC Rcd 15293, 15320, n. 165 (2000) ("*Part 1 Fifth Report and Order*") (noting that in auctions 1-15, rural telcos won about 44 percent of the 123 rural Basic Trading Area licenses).

"opportunity" than was afforded to Dobson, which built its wireless footprint in rural areas almost entirely through the acquisition of systems in the marketplace. The Commission has already satisfied the statutory requirement by giving rural telcos ample opportunities to provide spectrum-based services, and it should not now reward them with a bidding credit simply because they have apparently failed where companies like Dobson have succeeded. Rural telcos who qualify as small businesses will continue to have the opportunity to use bidding credits in future auctions.

If it were to adopt a specific rural telco bidding credit, the Commission would risk unfairly skewing auctions in favor of the few rural telcos that would not qualify as "small businesses." A rural telco bidding credit is not required under the statute and it would amount to discrimination against non-rural telcos that are committed to serving rural customers. In short, adopting a rural telco bidding credit would be a bad policy choice.

When it first adopted auction rules for PCS auctions, the Commission rejected requests to create a rural telco bidding credit, concluding that the rural telcos had failed to provide sufficient evidence that a rural telco-exclusive bidding credit was necessary, and that unlike small businesses, rural telephone companies are not denied access to capital and therefore unable to compete.[39] More recently, after specifically soliciting comment on mechanisms that would increase opportunities for rural telcos, the Commission again declined to adopt a rural telco bidding credit because of a limited record, thus suggesting that rural telcos had failed to establish a need for such special treatment.[40] Apparently thinking that the third try will be a charm, rural telcos are again attempting to gain an unfair advantage in future auctions. The history of competitive bidding for spectrum licenses, however, shows that the small business bidding credit that the Commission makes available affords worthy rural telcos adequate

[39] *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 457 (1994).

[40] *Part 1 Fifth Report and Order* at 15320-15321.

opportunities to acquire spectrum licenses. The Commission therefore should not grant preferential treatment to rural telephone companies as a preferred class.

IV. The Commission Should Retain ETC Rules That Promote Competition and Encourage Build-out of Rural Markets.

The Commission seeks information on whether its Eligible Telecommunications Carrier ("ETC") rules have promoted deployment of wireless services to rural areas and greater subscribership in these areas.[41] The current rules for obtaining ETC status are not at all user-friendly for wireless carriers seeking to serve remote rural areas. The rules for computing support are entirely ILEC-centric and do not translate readily to the wireless marketplace.[42] Yet the Commission's decision in 1997 to make funding portable removes the barrier to competition that existed when support was provided to ILECs alone. As a carrier competing to serve consumers in underserved and high-cost communities, Dobson urges the Commission to maintain a system that does not limit or eliminate the ability of wireless carriers to receive the same amount of support as received by the ILEC. If funds are made available to facilitate the provision of service in areas where it would otherwise be uneconomic, they should be made available fairly to any carrier (landline or wireless) that is willing to serve.

A major barrier to the development of competition in rural areas has been the outdated regulatory structures that benefit the ILECs. Until Congress enacted the Telecommunications Act of 1996, universal service funds were only available to the incumbent wireline carriers. Without support, non-ILECs cannot compete in rural markets because explicit support allows ILECs to charge prices and offer services that non-ILECs cannot afford to offer. The Commission has acknowledged this barrier to entry: "we believe

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[41] *NOI* at ¶ 30.

[42] For example, support is determined based on geographic areas that are tied to the ILECs' networks, and have no relation to wireless networks.

that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price."[43]

The current universal service support system that was implemented after the 1996 Act, however, allows wireless carriers to receive support to serve high cost areas and therefore compete on a level playing field with the ILECs. Rural consumers benefit from the competition by receiving service in areas that were previously unserved or underserved, as well as by gaining access to new and innovative services, a greater range of service choices (such as expanded calling areas), more rapid deployment of technological innovations (including next-generation technology), incentives for the incumbent carrier to upgrade its facilities and improve its customer service, and lower rates. Further, wireless service is an alternative to wireline service, especially in rural areas, and is therefore a solution to providing service to previously unserved areas. By removing the barrier to market entry and promoting competition, the ETC rules have promoted deployment of wireless services to rural areas.

The Commission also seeks information regarding wireless ETC customers who also maintain their wireline phones, as well as customers who had no phone service prior to purchasing wireless service.[44] Dobson is concerned that this line of inquiry not be used to deny funding to wireless ETCs for customers already receiving landline service. Rural ILECs have proposed that competitive ETCs should only receive support for customers who have terminated their landline service or were previously unserved.[45] This proposal should be rejected. As explained above, making universal service support available to wireless ETCs is critical to ensuring competition in rural areas. If wireless ETCs are not

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[43] *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16231 (2000) ("Western Wireless MO&O").

[44] *NOI* at ¶ 30.

[45] The Commission has actually sought review of this proposal by the Federal-State Joint Board on Universal Service ("Joint Board"). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, FCC 02-307, ¶ 9 (2002).

supported, ILECs would have an unfair advantage, essentially barring wireless carrier entry. The Commission has recognized that "[a] mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors."[46] Without competition, ILECs can offer higher prices, fewer services and less efficient customer care; this result would certainly not promote the Commission's goal of deploying wireless services to rural areas and would harm customers who would benefit from competition. In order to ensure competitive neutrality, Dobson urges the Commission to maintain a system wherein ILECs and wireless ETCs receive identical support, because rural customers will lose out if competition is allowed to disappear. For this same reason, the Commission should urge the Joint Board to recommend that support should not be limited to a single connection.

V. The Commission Can Help Promote Deployment of Wireless Service in Rural Areas By Relaxing Its Application of Mandates That Would Force Rural Carriers to Divert Capital From Service-Improving Activities.

As part of its inquiry in this proceeding, the Commission asks commenters to identify obstacles to providing wireless services in rural areas, and seeks comment on the economic viability of building out in rural areas.[47] Because rural markets are, by their nature, more sparsely populated than urban markets, rural carriers incur higher marginal costs per subscriber. The economics of providing service in rural areas thus require rural carriers to carefully control their capital expenditures. Because of the slump in equity values and the limited availability of capital across the wireless sector (especially acute recently), rural carriers are struggling to improve their networks and remain competitive.

Dobson believes that, when properly managed, rural wireless markets can be profitable. The Commission, however, should recognize in its policies that regulatory mandates disproportionately affect small- and medium-sized carriers that focus on smaller markets. Thus, when applying new regulatory

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[46] *Western Wireless MO&O,* 15 FCC Rcd at 16231.

[47] *NOI* at ¶ 12.

mandates, the Commission should remain mindful that the capital budgets of rural carriers are more limited than those of the nationwide carriers with whom they compete. Applying regulatory mandates equally on small and large carriers alike will have disproportionate effects. The Commission would help to promote build-out in rural America by relaxing its application of mandates that would force rural carriers to divert capital away from use that would improve services to consumers.

The Commission's regulatory requirements force carriers to divert funding from other activities, such as network improvements and offering additional products and services demanded by the marketplace. The imposition of unfunded regulatory mandates on rural carriers makes these activities even more difficult.[48] For example, significant capital expenditures are required to implement wireless local number portability ("LNP"). These expenditures will have a disproportionate impact on smaller carriers like Dobson, placing them at a competitive disadvantage in markets in which they compete with the larger, national carriers.

Allowing smaller carriers like Dobson to use their financial and human resources to improve service to customers and compete better with the national carriers will advance the Commission's pro-competitive goals. According to the Cellular Telecommunications and Internet Association, wireless companies in general invest forty cents of every revenue dollar back into their networks.[49] If required to implement LNP, a substantial portion of Dobson's capital improvements budget would be diverted from other network needs that would provide greater benefit to Dobson's customers, such as expanding coverage in unserved areas, extending digital coverage, and providing more competitive rate plans. Providing relief from the LNP requirement would free up a significant amount of capital, which rural carriers like Dobson could use to improve coverage and deploy new technologies, products and services

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[48] *See Seventh CMRS Competition Report at* n. 243 (According to Terry Addington, President of the Rural Cellular Association, "Mandates are very, very difficult for a small carrier to manage because we're resource challenged.").

[49] *See* http://www.wow-com.com/industry/policy/cong-affairs/articles.cfm?ID=366 ("Wireless: Massive Growth in an Incredibly Short Period of Time" at 7).

in rural areas, thereby advancing the statutory goals and making them more effective competitors in the marketplace.[50]

Having recognized the obvious fact that the economic viability of building out in rural areas is a key to carriers' ability to provide wireless services in these areas, the Commission should keep this consideration in mind when it considers imposing unfunded mandates. Relaxing mandates that force wireless carriers to utilize limited funds to satisfy regulatory requirements will promote further competition in rural areas because it will allow carriers to invest in their networks and offer additional services to their customers.

CONCLUSION

Dobson Communications Corporation appreciates the opportunity to address issues of importance to rural wireless service. For the reasons set forth above, Dobson respectfully urges the Commission to recognize that it can best advance the statutory goal of development and rapid deployment of spectrum-based services in rural areas by ensuring that the regulatory environment in which these services are provided allows market forces to operate as freely as possible.

Respectfully submitted,

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[50] Relieving rural carriers from the LNP requirement also would be consistent with the Commission's finding in the E911 context that smaller carriers are differently situated. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841 (2002) (Commission granted mid-sized and small carriers additional time to comply with the Commission's E911 Phase II deadlines.)